

## RULEMAKING NOTICE FORM

Notice Number **2015-189**

Rule Number **He-M 1301.01, He-M 1301.03  
& He-M 1301.08**

1. Agency Name & Address:

**Dept. of Health & Human Services  
Bureau of Behavior Health  
109 Pleasant Street-Main Building  
Concord, NH 03301**

2. RSA Authority:

**RSA 186-C:25, IV & V**

3. Federal Authority:

**42 USC Title 42 1396B(c)**

4. Type of Action:

Adoption

Amendment

Repeal

Readoption

Readoption w/amendment

**X**

**X**

5. Short Title: **Medical Assistance Services Provided by Education Agencies, Purpose, Child Eligibility and Waiver**

6. (a) Summary of what the rule says and of any proposed amendments:

**The rule He-M 1301 describes the services provided by school districts and school administrative units that are reimbursable under the medical assistance program. The rules describe available services and allow students to receive necessary services within the least restrictive environment. Participation in the medical assistance program is discretionary on the part of the school districts and this rule does not impose upon school administrative units the responsibility to provide any services that they are not otherwise legally responsible to provide under RSA 186-C or other law. He-M 1301.01, 1301.03 and He-M 1301.08 are scheduled to expire on November 22, 2015, but are subject to an extension pursuant to RSA 541-A:14-a. Other sections of the rule were readopted with amendment in 2013 and will not expire until 2023.**

**The Department of Health and Human Services (Department) is proposing to readopt He-M 1301.01 with an editorial amendment correcting the statutory authority, and in order to prevent expiration. The Department is proposing to readopt with a substantive amendment He-M 1301.03 Child Eligibility in order to clarify the eligibility age from 22 to 21, and to make an editorial change updating a reference to the Department of Education Rule now found at Ed 1102.01(t).**

**He-M 1301.08 is being readopted to prevent expiration. This program designed in accordance with Section 1903 of the Social Security Act, 42 USC 1396, which permits but does not mandate the creation of a "Medicaid to Schools Program." Under this program Medicaid reimburses schools for services provided to students.**

6. (b) Brief description of the groups affected:

**Those affected by the rule include eligible children who meet the definition of a child with a disability as defined in Ed 1102.01(t).**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<u>RULE</u>	<u>STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS</u>
He-M 1301.01	RSA 171-A:6, RSA 135-C:1
He-M 1301.03	RSA 171-A:6, RSA 135-C:1, 42 CFR 483.106
He-M 1301.08	RSA 171-A:6; 135-C:1; 42 CFR 483.132

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard** Title: **Rules Coordinator**  
Address: **Dept. of Health and Human Services** Phone #: **271-9374**  
**Administrative Rules Unit** Fax#: **271-5590**  
**129 Pleasant St.** E-mail: [catherine.bernhard@dhhs.state.nh.us](mailto:catherine.bernhard@dhhs.state.nh.us)  
**Concord, NH 03301**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:  
<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, December 17, 2015**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, December 10, 2015 at 2:30 p.m.**

Place: [\*\*DHHS Brown Bldg., Room 288, 129 Pleasant St., Concord, NH\*\*](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **15:200**, dated **11/9/15**

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in costs when comparing the proposed rules to the existing rules.

**2. Cite the Federal mandate. Identify the impact of state funds:**

No mandate, no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

None.

**C. To Independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rule modifies an existing program or responsibility, but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.**

PART He-M 1301 MEDICAL ASSISTANCE SERVICES PROVIDED BY EDUCATION AGENCIES

Statutory Authority: RSA 186-C: 25

**Readopt He-M 1301.01, effective 11-22-07 (Document # 9035), to read as follows:**

He-M 1301.01 Purpose. The purpose of these rules is to describe the services provided by school districts and school administrative units that are reimbursable under the medical assistance program. These service descriptions are established to allow students to receive necessary services within the least restrictive environment. Participation in the medical assistance program is discretionary on the part of school districts and school administrative units. These rules are not intended to impose upon school districts and school administrative units the responsibility to provide any services that they are not otherwise legally responsible to provide under RSA 186-C or other law.

**Readopt with amendment He-M 1303.03, effective 11-22-07 (Document # 9035), to read as follows:**

He-M 1301.03 Child Eligibility. To be eligible for medical assistance reimbursement for covered services, a person shall:

- | (a) Be identified as a child with a disability as defined in Ed 1102.01(t) for whom an IEP has been developed in accordance with RSA 186-C: 7;
- | (b) Be less than 2221 years of age;
- (c) Be eligible for medical assistance; and
- (d) Be served by an LEA or SAU that is an enrolled provider.

**Readopt He-M 1301.08, effective 11-22-07 (Document # 9035), to read as follows:**

He-M 1301.08 Waivers.

(a) An enrolled provider may request a waiver of specific procedures outlined in He-M 1301 by writing to the administrator of the bureau.

(b) A completed waiver request shall be signed by the enrolled provider's designee.

(c) A waiver request shall be submitted to:

Department of Health and Human Services  
Office of Client and Legal Services  
State Office Park South  
105 Pleasant Street, Main Building  
Concord, NH 03301

(d) No federally mandated requirement and no provision or procedure prescribed by state statute shall be waived.

(e) The request for a waiver shall be granted by the commissioner or his or her designee within 30 days if the alternative proposed by the enrolled provider:

- (1) Meets the objective or intent of the rule;
- (2) Does not negatively impact the health or safety of the student(s); and
- (3) Does not affect the quality of services to students.

(f) Upon receipt of approval of a waiver request, the enrolled provider's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered compliance with the rule for which waiver was sought.

(g) Waivers shall be effective for a maximum of 3 years.

(h) An enrolled provider may request a renewal of a waiver from the department. Such request shall be made at least 30 days prior to the expiration of a current waiver.

#### APPENDIX

<u>RULE</u>	<u>RSA or Federal Regulation Implemented</u>
He-M 1301.01	RSA 171-A:6, RSA 135-C:1
He-M 1301.03	RSA 171-A:6, RSA 135-C:1, 42 CFR 483.106
He-M 1301.08	RSA 171-A:6; 135-C:1; 42 CFR 483.132